IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.08.2007

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

W.P.No.26684 of 2007 &
M.P.No. 1 of 2007

Tvl.C.Manickam Chetty Son,
Rep. By its Proprietor,
N.Ananda Padmanabhan .. Petitioner

Vs.

The Deputy Commercial Tax Officer,
Shevapet Assessment Circle,
Salem .. Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari, calling for the records on the file of the respondent in TIN.No.33072640005 dated 6.6.2007 and quash the same.

For petitioner : Mr.R.Senniappan
For respondents : Mr.R.Mahadevan, AGP

ORDER

The petitioner sought a certiorarified mandamus to quash the order of the respondent dated 6.6.2007.

2. The petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 and assessee on the file of the respondent and reported Rs.12,96,478.98 being closing stock value and consequent input tax credit amount of Rs.1,60,709.76 reported to the respondent for availing input credit. The respondent granted credit only to the tune of Rs.72,646/- as eligible amount of input tax credit and for the rest of the amount declined to grant input tax credit for the inter-State purchase value of Rs.6,56,581.42.

3. The petitioner received the pre-assessment notice dated 11.4.2007 and by reply dated 30.5.2007, objected to the proposal for disallowance of the facility for the balance amount of Rs.88,063.76 on the ground that the entire closing stock value of Rs.12,96,478.98 had been tax suffered goods under the Tamil Nadu General Sales Tax Act, 1959 which include the inter-State purchase turnover of Rs.6,56,581.42.

4. The petitioner further submitted in his objections that since the petitioner found it difficult in segregating locally purchased goods and inter-State purchase of goods however, by way of abundant caution, paid the entire tax amount to the department on the entire closing stock value even before sales was effected in the State of Tamil Nadu.

5. The Assessing Officer considered the objection of the dealer dated 30.5.2007 with reference to the statutory provision and ordered as follows:
"Section 19(5) (b) of the Tamil Nadu Value Added Tax Act, 2006 states that "No input Tax credit shall be allowed on tax paid or payable in other States on goods brought into the State from outside the State".
"Rule 10(3)(b)(i) states that the purchase has been effected from the first seller in the State with invoice, the claim of input tax credit shall be allowed."
Hence your reply is not considered. The input tax credit claim for the inter-State purchases are disallowed. Hence it is determined the input tax credit available to to the dealer for the closing stock held on on 31.12.2006 at Rs.72,646/-
This credit shall be availed before 30th June 2007. the unavailed credit in the month of July 2007 shall lapse to the Government.
Aggrieved by the assessment order the petitioner has filed the present writ petition for the relief as stated above.

6. Learned counsel for the petitioner referring to rule 10(3)(b)(iv) of Tamil Nadu Value Added Tax Act, 2006 submitted that since the petitioner had already paid the local tax and entire value of stocks, the impugned order is liable to be set aside. Rule 10(3)(b)(iv) of the Tamil Nadu Value Added Tax Rules 2006, reads as follows:
"Where any tax is paid on any goods at the point of purchase by the dealer himself, such tax shall be eligible for claiming input tax credit."

7. Section 19(5) (b) of the Tamil Nadu Value Added Tax Act, 2006 is explicit that no input tax credit shall be allowed on tax paid or payable in other States or Union Territories on goods brought into this State from outside the State and and as per Rule 10(3)(b), in the case of claim of input credit for other than capital goods purchased on or after 1st January 2006, held in stock on commencement of the Act,
(i) Where the purchase has been effected from first seller in the State with invoice or bill showing the tax separately the claim for input tax credit shall be allowed to the extent of the tax paid by him on the value of goods.

(iv) "Where any tax is paid on any goods at the point of purchase by the dealer himself, such tax shall be eligible for claiming input tax credit."

The contention of the petitioner cannot be countenanced in law in view of the specific provision under sections 19(5)(b) of the Act. Rule 10(3)(b)(i) refers to the purchase of goods other than capital goods, which have been effected on the first seller in the State and therefore, rule has to be read as a whole and 10(3)(b)(iv) cannot be read in isolation. The object of the enactment is if a dealer purchases goods within the State of Tamil Nadu and pays tax to another registered dealer, then he is entitled to take the input credit of the tax paid or payable under this Act and not intended to permit the dealer to avail input credit in respect of tax on the goods brought into the State by purchase effected from outside the State.

8. In view of the above, the petitioner is not entitled to avail input tax credit on the goods purchased

from outside the State.

9. I do not find any infirmity or illegality in the assessment order of the respondent and therefore the writ petition is liable to be dismissed and accordingly dismissed. However, it is open to the petitioner to make an application seeking for refund of excess payment or adjustment of the tax paid under section 19(17) and (18) of the Tamil Nadu Value Added Tax Act 2006, to the authorities and on receipt of such application, the competent authority shall consider the same and pass appropriate orders on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.
rj

To

The Deputy Commercial Tax Officer,
Shevapet Assessment Circle,
Salem.

+ 1 CC To Mr. R.Senniappan, Advocate SR NO.49785

+ 1 CC to the Spl. Government Pleader SR NO 49935
W.P.No.26684 of 2007
and
MP. No.1/07
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